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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/966,696	09/28/2001	Joseph R. Hedrick	0112300-449	5013

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EXAMINER
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RADA, ALEX P

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 03/19/2004

12

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/966,696

Applicant(s)

HEDRICK ET AL.

Examiner

Alex P. Rada

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14, 17-52, 54 and 55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20, 21, 54 and 55 is/are allowed.
- 6) ☒ Claim(s) 1-14, 17-19, and 22-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3714

## DETAILED ACTION

### *Response to Amendment*

In response to the amendment filed November 19, 2003 in which the applicant's have amended claims 13-14, 17-21, and 36-50, cancels claim 53, adds new claims 54 and 55, and claims 1-14, 17-52, and 54-55 are pending in this office action.

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-14, 17-19, and 22-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takatoshi '558 in view of Frankel '990.

3. Takatoshi discloses a cabinet (figure 1), a support connected to the cabinet (figures 1-5), a container-item holder capable of being connected to the support (figure 1), and at least one channel (21) within the support as recited in claims 1, 13, 22, 26, 36, 41-42, 49-52;

the support having bolster (figure 1) as recited in claims 2, 23, and 27;

the bolster includes a substantially vertically extending channel (cylindrical, 21) capable of receiving a container-item holder as recited in claims 3, 24-25, and 28.

Takatoshi does not expressly disclose a container holder having a bottom surface and an item holder including means for enabling a player to securely and removeably connect an item to

Art Unit: 3714

the item holder having the item holder projecting from the bottom surface of the container holder as recited in claims 1, 13, 22, 26, 41, and 51-52;

the container-item holder having a container holder and an item holder as recited in claim 4;

the container holder includes a body and a flange connected to the body and the flange having a circumference greater than a circumference of the channel in the support adapted to receive the container holder as recited in claims 6, 17, 30, 36, 41, 46, and 51;

the item holder having a hook as recited in claims 7, and 31;

the container holder having a base and a body connected to the base and the base enabling fluid to drain through the base as recited in claims 8, 38, and 45;

the container holding portion includes a base, a body extending from the base and the base defining a chamber for receiving and holding a container as recited in claim 44.

Frankel teaches a container holder capable of being received or mounted in a plurality of different ways having a bottom surface and an item holder includes means for enabling a player to securely and removeably connect an item to the item holder having the item holder projecting from the bottom surface of the container holder (figure 25 and column 9, lines 43-47), the container holder includes a body and a flange (figure 25) connected to the body and the flange having a circumference greater than a circumference of the channel in the support adapted to receive the container holder the item holder having a hook (262), and the container holder having a base and a body connected to the base and the base enabling fluid to drain through the base. By having an item holder (hook) connected or combined with a container holder, it would have

Art Unit: 3714

been obvious to one of ordinary skill in the art, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art.

Therefore, it would have been obvious to one of ordinary skill in the art to modify Takatoshi to include a container holder having a bottom surface and an item holder includes means for enabling a player to securely and removeably connect an item to the item holder having the item holder projecting from the bottom surface of the container holder, the container holder includes a body and a flange connected to the body and the flange having a circumference greater than a circumference of the channel in the support adapted to receive the container holder the item holder having a hook, and the container holder having a base and a body connected to the base and the base enabling fluid to drain through the base as taught by Frankel. To do would provide a securement for loose articles.

At the time the invention was made, it would have been an obvious design choice to a person of ordinary skill in the art to different types of connectors used because Applicant has not disclosed that the connecting portion connected to the base and a securing portion connected to the connecting portion, the holder is rotatably connected to the container, and a means for inhibiting an item from being easily removed from the item holder as recited in claims 5, 9-12, 14, 18-19, 29, 32-35, 37, 39-40, 43, and 47-48 provides an advantage. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the different types of connecting portions or holders taught by Frankel because any type of connector or holder would provide the same purpose of securement of loose articles.

***Allowable Subject Matter***

4. Claims 20-21 and 54-55 are allowed.

***Response to Arguments***

5. Applicant's arguments filed November 19, 2003 have been fully considered but they are not persuasive.

6. In response to applicant's argument that the Frankel reference is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the Frankel reference is analogous art regarding the particular problem to be solved. Frankel teaches the particular structure capable of being mounted to a support or by means of insertion into a channel (chamber) by having a holder (hook) for the securement of loose articles ( column 9, lines 43-47).

7. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

*Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 703-308-7135. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3714

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Apr

  
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